IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.277 OF 2007

Shankarlal V.Trivedi .. Petitioner.
Versus
Dharamdatt V.Trivedi .. Respondent.

Mr.Ketan Parekh with Ms.Kunjal Sanghvi i/b.M/s.K.R.Parekh & Co. for petitioner.
Mr.D.R.Barot for respondent.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 28th September, 2007.

P.C.:

1. Heard learned counsel appearing for parties on the question of interim measures.

2. The submission of the petitioner is that there was a partnership business and the petitioner and the respondent were partners therein. There are disputes and differences and the only asset of the partnership is the shop premise at Mangaldas Market. Reliance is placed upon the correspondence, copies of which are annexed to the petition to urge that this asset at least in part has been alienated and the apprehension is that until the arbitral award is made, this asset would not survive and, therefore, would be unavailable for distribution.

3. The respondent has pointed out that the

partnership business has been discontinued in 1994. It is not in serious dispute that the third party is in possession of part of the shop premise since 1992 and would continue there for a period of two years more if the sum is being paid towards compensation and the respondent is ready and willing to account for the same. Although the petitioner would press for appointment of a Court Receiver in the facts and circumstances and in the light of the letter, copy of which is relied upon throughout, it would not be fair and proper to appoint a Court Receiver at this stage. More so, when the third party is in possession for quite some time. It is disclosed in the affidavit by the respondent that the shop premises bearing No.157 situate at Mangaldas Market, Mumbai is admeasuring 100 sq.ft. and in part of the same, M/s.Sanghvi S.Rajmal & Co. have been inducted, whereas the other portion is in possession of the respondent. The third party is paying a sum of Rs.7,500/- as monthly compensation, out of which Rs.1,500/- is being forwarded to the landlord as monthly rent whereas Rs.1000/- are the electricity charges approximately.

4. In such view of the matter, no useful purpose will be served by appointing the Court Receiver when the third party is in occupation for quite some time and considering

the old age of the respondent, it would be fair and proper if the following order is made :-

a) The respondent shall not alienate, encumber, part with possession or transfer and or induct any third party in the Shop No.157, save and except M/s.Sanghvi S.Rajmal & Co., who is presently in possession of a part therein.

b) Upon the said M/s.Sanghvi S.Rajmal & Co. surrendering possession, the respondent shall not part with possession thereof in any manner nor transfer the said shop to any third party pending the arbitral reference.

5. Until further orders, respondent is permitted to collect the monthly compensation but he shall deposit the sum of each monthly compensation in a Bank account preferably in a nationalised bank and from the said monthly sum incur expenses to be payable to the landlord and electricity bills. He shall furnish a complete account duly authenticated by the official of the bank and forward the same to the petitioner every month. The account should also disclose if any other withdrawals are being made there from. This arrangement shall come into

force from 1st November, 2007 and shall continue in force until further orders of this Court or the Arbitral Tribunal. Liberty to apply for modification if the circumstances so warrant or for further reliefs.

6. The learned Advocate, appearing for the respondent states that M/s.Sanghvi S.Rajmal & Co. are occupying the portion of the shop premises as licensee and no rights of any nature whatsoever including tenancy rights are created in the suit premises.

7. Petition is disposed of.

(S.C.Dharmadhikari, J.)